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DECISIONS IN THE
CHINATOWN CASESNo Civil Commotion Here at the
Time of the Fire.SO SUPREME COURT HOLDS IN ONE
APPEALED SUIT FOR INSURANCEIn Two Others it is Declared That the Conflagration was Done
by the Act of the Civil
Authorities.Three of the Chinatown insurances
were decided yesterday by the Supreme
Court.In the case of the Yee Wo Chan Com-
pany against the Transatlantic Fire In-
surance Company in which judgment
was given for the plaintiffs by Judge
Silliman some months ago for \$5000, the
Supreme Court affirms the decision and
overrules the exceptions of the defend-
ants.In Yee Wo Chan against the Magde-
burg Fire Insurance Company in which
the defendants were given judgment by
Judge Silliman the decision is likewise
affirmed.The third case, the Hawaii Land
Company against the Lion Fire Insur-
ance Company, was submitted on an
agreed statement of facts and it is de-
cided for the defendants in the same
opinion and on the same grounds as the
Magdeburg case.These three cases arose out of the
burning of Chinatown on January 20th
last and are representative of a large
number of others. Chinatown was in a
very insanitary condition at the time
of the breaking out of the plague and
the district was placed in quarantine
by the Board of Health. Early in Jan-
uary the Board adopted fire as a means
of disinfection and thereafter from time
to time until the 20th of that month
burned a number of buildings. On the
10th of January a resolution was passed
by the Board declaring that a portion
of the district farthest inland was in
an insanitary condition and infected by
plague, and that the infection could not
be removed by any means but fire. All
the buildings within that portion of the
block were ordered destroyed.The fire accidentally spread to the
Kaumakapili church and thence
burning nearly the whole of Chinatown
destroying the stores owned by the
plaintiffs which were several blocks
from the spot where the fire originated.
There was only a moderate breeze
blowing at the time of the fire and no
cause intervened between the setting of
the fire by order of the Board of Health
and the burning of the property owned
by the plaintiffs.

WORDING OF POLICIES.

The difference in the cases and their
outcome lies in the wording of the
policies. In the case of the
Yee Wo Chan Company against the
Transatlantic Company which was
decided for the plaintiffs the policies
excepted among other things loss re-
sulting from civil commotion and it is
on this ground that the insurance com-
pany refused to pay the policy, claim-
ing that there was a civil commotion
in Honolulu as a result of the bubonic
plague epidemic. In this case the court
holds:"That phrase 'civil commotion' is no
doubt of broad meaning, but it cannot
be stretched to cover the condition pre-
vailing in this city during the period
preceding the fire in question. A civil
commotion requires the wild and irreg-
ular action of many persons assembled
together. It is true that in this case
the business of the courts and of the
community was more or less interrup-
ted, but that is not sufficient to make
a civil commotion. There was nothing
of a wild, tumultuous, violent, turbu-
lent or seditious nature which the
phrase is generally understood to imply
and which it was intended to imply in
this policy as shown by the words with
which it is associated. The interruption
to business was orderly, deliberate and
for peaceful and laudable purposes. . .
The plague itself was not a civil com-
motion. There was, it is true, consider-
able excitement after the fire depart-
ment lost control of the fire, for sev-
eral thousand people had to leave their
homes in haste in order to escape the
flames and had to be safely conducted
elsewhere and not allowed to scatter
in the uninfected portions of the city,
but if there was a civil commotion then
it did not cause the fire; the fire caused
it."It is held that: "The circumstances
set forth in the opinion did not show
that the loss was caused by civil com-
motion so as to exempt the insurers
under the clause in the policy that they
should not be liable for loss or damage
caused by civil commotion," and judg-
ment is given for the plaintiffs.

BY CIVIL AUTHORITY.

Quite a different state of facts exists
in the other two cases, the Hawaii
Land Company vs. the Lion Insurance
Company and Yee Wo Chan against the
Magdeburg Insurance Company. In
the policies sued upon there was a
clause which expressly exempted the
companies from liability "for loss caused
directly or indirectly by invasion,
insurrection, riot, civil war or com-
motion, or military or usurped power," or
by order of any civil authority. It
was upon this last clause in the policy
that the defendants relied and this
point settled the case in their favor.The language of the policy is analysed
at great length by the opinion the
conclusion being arrived at that the
words, "directly or indirectly" applied
to the expression, "by order of the civil
authority." The contention that to ex-
empt the insurer from liability the or-
der must be lawful and that the Board
of Health could not lawfully burnbuildings. The court holds that the in-
sured cannot raise such a question.

THE BOARD OR PLAGUE?

Much space is devoted to the question
whether the order of the Board was the
cause of the loss from a legal stand-
point or whether the plague was the
cause. A long line of decisions is quot-
ed on this score."Where loss by fire," the opinion
says, "is insured against and loss caus-
ed directly or indirectly by the order
of any civil authority is excepted, the
order and not the fire should be regard-
ed as the cause within the meaning of
the contract. But since loss by plague
is neither insured against nor excepted,
the plague cannot be regarded as the
cause of the loss of property destroyed
by fire ordered by civil authority,
though in consequence of the plague.
We may add also that here as in the
Virginia case (mentioned in the opin-
ion) there was not the same pressing
necessity for the destruction of the
property either in point of time or as to
the method of destroying it as there
was in the case of Insurance Company
against Boon (cited above). Nor was
there the same recognized duty to de-
stroy it at all. In cases of that kind
there was a well-recognized military
necessity and duty to destroy property
of that kind under such circumstances,
so that in making the contract such
losses could fairly be considered as in-
tended to come within the scope of the
exception. But there is no well-known
necessity or duty or practice of burn-
ing buildings in case of plague or other
infectious diseases. On the whole we
are of the opinion that within the
meaning of these policies the loss must
be regarded as caused by the order of
the Board of Health and not by the
bubonic plague. Whether the Board of
Health was justified in issuing the or-
der is not before us."Both the opinions are written by Chief
Justice Frear and are concurred in by
Justices Galbraith and Perry.The attorneys for the Yee Wo Chan
Company were Paul Neumann and W.
A. Whiting, and for the Magdeburg In-
surance Company and the Transatlan-
tic Insurance Company were L. A.
Thurston and Robertson and Wilder.
J. T. DeBolt was attorney for the Ha-
waii Land Company and Castle and
Weaver for the Lion Insurance Com-
pany.

KOOLAU CASES RESTORED.

The "Koolau cases," so called, five in
number which were thrown out of
court at the beginning of the August
term by Judge Humphreys for failure
of the attorneys to appear, were all or-
dered placed on the calendar by the
Supreme Court yesterday.The decision in each is the same and
is: "The exception to the order of dis-
missing the appeal is sustained and the
case is remanded to the Circuit Court,
First Circuit, for further proceedings
consistent with this ruling. An opinion
will be filed later."The titles of the five cases are John
Bell vs. Palea, John Bell vs. F. Palea,
H. H. Parker, John Bell and William
Henry vs. Palea, and F. Palea vs. Pa-
lea. They arose out of trespasses by
cattle on the Koolau side of the is-
land and have been appealed from the
District Court to the Circuit Court and
then to the Supreme Court.CARSON CASE GOES TO HIGHER
COURT.The William Carson case will be ap-
pealed to the Circuit Court of Appeals
of the Ninth Circuit, sitting in San
Francisco. The Supreme Court last
week rendered judgment for the owners
and agents of the Carson, George U.
Hind et al against the Wilder's Steam-
ship Company, owners of the Claudine,
which ran the Carson down and sank
her and now the Wilder Company pro-
pose to take the case to San Francisco
on the questions of law and of fact
which are involved. The notice of ap-
peal was filed yesterday by Kinney,
Ballou & McClanahan, on behalf of the
Wilder Company.

CHARGES AGAINST GUARDIAN.

In February last charges were filed
against John Pae, guardian of Keao-
haokalani (K), a minor, of Ewa, by
Frank Archer, and these are to be in-
vestigated in the courts. An order has
been issued by Judge Humphreys yester-
day setting the case for Friday.

Vote the Republican Ticket Straight

LOS ANGELES, Oct. 17.—Creditors of
the Briggs-Spence Company, fruit ship-
pers, are hoping that some arrangements
can be made by which the young men
may resume business. The firm, com-
posed of George M. Briggs of Chicago and
W. Glenn Spence of this city, is in finan-
cial difficulty, owing \$75,000 with compar-
atively little assets. Of this amount prob-
ably \$40,000 is owing to fruit growers. Of
the other indebtedness the principal item
is \$3,500, due the State Bank & Trust Co.
It is understood that the fruit growers
are inclined to be lenient with the young
men, whose enterprise has temporarily
gone awry. Glenn Spence has about \$40,-
000 interest in the estate left by his father,
E. F. Spence of Monrovia, and the
statement is made today that his mother
will come to his assistance.

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